

**M E M O R A N D U M**

**TO:** Commissioners and  
Interested Persons

**DATE:** October 19, 1999

**FROM:** Peter Douglas, Executive Director  
Chuck Damm, Senior Deputy Director  
Steve Scholl, Deputy Director

**SUBJECT: Workshop on Possible Actions the Commission can take to Reduce  
the Large Quantity of Late Materials Received During Commission  
Meetings**

**Introduction**

At the Commission Workshop held this past June, one of the topics that was discussed related to what could be done about the large amount of late materials the Commission receives. In particular there was concern about representatives for applicants who provide the Commissioners with notebooks or binders full of material on controversial projects on the morning of the hearing, or just a day or two before the hearing date. While this issue of large amounts of late material is not new, it is a difficult and chronic problem for the Commissioners and staff. On the other hand, the Commissioners and staff have long taken pride in our efforts to process applications rapidly and without undue delays.

The upshot of the discussion at the June workshop was that the Commission decided a separate workshop should be held at a future date in order to further explore options available to reduce the large quantity of written information the Commissioners receive during the course of a Commission meeting with little or no time for reading and evaluating that material in advance. This places the Commission in a difficult position with regards to your deliberations.

**Formation of a Committee**

The Commission also decided at the June Workshop to have a committee formed consisting of Commissioners Daniels and McClain-Hill, along with planning staff and legal staff members. The Committee members discussed by telephone, e-mail and in person the problems and ideas associated with the issue of late materials. The results of the Committee discussions are tabulated below with the intent being that the Commission further discuss the merits of these ideas, and ultimately decide what changes (if any) should be made to the current process for handling late materials.

Staff wishes to especially thank Commissioners McClain-Hill and Daniels for their comments and ideas that provided a basis for this report.

### **Current Practice**

It may be difficult for new Commissioners to understand why the Commission hearing procedures allow for the submission of such large amounts of late materials, and how we came to the process currently utilized. There are a number of reasons as to how the current process evolved.

First, the Commission is not a court of law in which strict rules apply. In fact, the Coastal Act includes provisions that encourage the broadest public participation feasible. So, there has never been any rules or regulations that would limit the size of written submissions, or control the timing of such submissions. In part this is in response to the fact that proponents and opponents have very limited time for oral testimony in front of the Commission, so written comments have been encouraged. What the Commission has done with some regularity is continue an item if there are relevant unanswered questions raised by the content in late materials.

Second, in discussions with legal staff, to limit the size of late material submissions (e.g., to not more than 15 pages) would require much further legal review. Currently there does not appear to be a legal basis for doing this. As a result, the Commission has not limited the size of late material submissions.

Third, as to the timing of submission of late materials, while the Commission has encouraged proponents and opponents to submit materials as early as possible, it has always been recognized that this is not easy considering the staff reports are only completed ten days to two weeks before the Commission hearing (sometimes even less) and the public hearing notices are not sent until about ten days before the hearing. While, as noted above, the Commission has continued items when relevant unanswered questions have been raised by the content in late materials, the Commission has not been willing to simply, as a matter of routine, continue projects for one or two months because of submission of late materials. In fact, efforts have been made in the past by both proponents and opponents to get the Commission to continue items (as a delaying tactic) by waiting to submit materials until the last minute.

### **Past Improvements for Dealing with Late Materials**

Some modest changes have been made in the past to improve the situation with regards to submission of late materials, and further additional changes may be feasible. In fact, staff is recommending some changes that we believe can be done in the short term that we think will assist the Commission with the problems you currently face in reviewing the large quantity of late materials.

However, the Commission should also be aware that the following changes have been made in the past to assist in reducing the problem.

- (1) providing the Addendum packet and Deputy Director's Report the night before the hearing instead of the morning of the hearing;
- (2) numbering the pages in the addendum packet to correspond to a table of contents on the first page;
- (3) clearly identifying which district office the addendum emanates from;
- (4) placing in the upper right-hand corner on the first page of all staff reports and addendum memos/letters the agenda item for purposes of quick identification;
- (5) providing a summary of the items included in the written Deputy Director's Report;
- (6) encourage proponents and opponents with large amounts of reading materials to provide copies of these materials to the Commissioners (and staff) as early as possible.

### **Summary of Ideas for Further Improvements**

Staff has listed ideas for possible means of improving how late materials are processed along with the pros and cons of each idea. We have further listed these as to ability to accomplish in the short term versus those that are more of a long-term objective due to the need for changes to the law or the Commission's regulations.

#### **Possible Short Term Changes**

<b>Item</b>	<b>Description</b>	<b>Pros</b>	<b>Cons</b>	<b>Timeframe</b>
1.	Improve the description of hearing procedures on the hearing notice to make clear the Commission's desire to have written material as early as possible	Relatively easy to achieve	Doesn't resolve problems associated with lengthy response to staff reports	2 – 3 months to implement as new hearing notice forms would have to be prepared
2.	Modify the agenda to include a note regarding procedures for submission of late materials	Relatively easy to achieve	Same as item number 1	2 – 3 months to implement
3.	Develop a form to include with the notice that applicant or concerned citizen completes which summarizes their concerns (could be mailed with the notice)	Allows Commissioners to have a quick synopsis of large late submissions	Doesn't prevent large late submissions	3 – 6 months

**Possible Long Term Changes**

<b>Item</b>	<b>Description</b>	<b>Pros</b>	<b>Cons</b>	<b>Timeframe</b>
4	Place a 15 page limit on responses to staff reports	Simple to achieve through changes to notice and informing applicant and concerned citizens	Raises legal concerns as this may not be acceptable under current law	Six months or longer depending on resolution of the legal issues
5	Modify procedures for distribution of staff reports so that they are available to applicants and concerned citizens a month before the Commission hearing with notice indicating that comments and responses must be received within two weeks so that staff report and all responses are mailed to Commissioners two weeks before the hearing	Would have the major benefit of providing the Commission with all written material approximately two weeks before the hearing	Raises a number of legal concerns regarding the time restrictions in the Coastal Act and effects on delaying action on applications. Would limit ability of public to comment on projects that they learn about only in the 2 weeks prior to a Commission meeting	Six months or longer depending on resolution of the legal issues

6	Formalize the process of continuing the public hearing to a future meeting date, if necessary, when large quantities of late materials are received on the day of the public hearing.	This is essentially the current practice, although staff would need to revise forms and discuss with counsel the legal implications if an applicant insists on a Comm. vote	Could result in unnecessary delays or abuse by either proponents or opponents who are seeking delays in order to obtain a change in venue; requires additional staff work because continued items must be re-noticed, staff reports must be reproduced again, etc.	As this would essentially formalize the Commission's practice, it is doable. May require change to the Commission's regulations, which is a time consuming process
7.	Establish a two step hearing process whereby at the initial hearing all input, both in written and oral form, would be received from proponents and opponents. After the initial hearing, no further comments would be accepted. At a second hearing a month later, only Commission discussion and action on the item would occur.	The Commission would have ample opportunity to review all written materials and consider the oral testimony that was received at the initial hearing	Stretches out the decision making process; would make the Comm. hearings considerably longer; adds to the staff work significantly; some oral testimony might be overlooked at the second hearing	Would require thorough review to determine if this can be done without further changes in the regulations; would have to fully evaluate the impacts on length of Commission hearings and staff resources. Probably 6 – 12 months to implement

### **Staff Recommendation**

Staff recommends that the Commission, after taking public testimony, direct staff to implement items 1, 2, 3 and 6. Items 4, 5 and 7 do not appear feasible to accomplish within a reasonable time period, so staff does not recommend the Commission direct staff to work towards implementing those three items.

### **Alternatives**

After taking public testimony, and after Commission discussion, the Commission may direct staff to: (1) continue to utilize the current practice with no changes; (2) modify the recommendation of staff to include or delete additional items; and (3) take no action and direct staff to investigate further possible additional changes.

### *Attachments:*

*Sample public hearing notices for permits and LCPs*

*Last page of Meeting Notice*

*Memo of February 23, 1998 "Minor changes to the way we prepare the Addendum and Deputy Director's Report"*